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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,854	06/07/2005	Jeffrey J. Fisher	25,961-20US	7199

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Fulbright & Jaworski
2100 Ids Center
80 South Eighth Street
Minneapolis, MN 55402-2112

EXAMINER

MATTER, KRISTEN CLARETTE

ART UNIT	PAPER NUMBER
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3771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/537,854

Applicant(s)

FISHER ET AL.

Examiner

Kristen C. Matter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/27/06.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings submitted contain illegible reference characters and apparent photographs (Figures 2 and 3). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the collapsible membrane must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 3, 5, 7, 8, 10, 11, 12, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Hill (US 6,944,889).

Regarding claims 1, 11, 12, and 13, Hill discloses a device and method for dispensing effervescent substances comprising a reservoir (5), a removable vapor-concentrating lid (4), and an effervescent composition (column 6, line 35).

Regarding claim 2, the reservoir disclosed by Hill can be considered a cup as best seen in Figure 4.

Regarding claim 3, Hill discloses that the cup can be made of foamed plastic (column 4, lines 30-40).

Regarding claim 5, Hill discloses vents in the lid (Figure 1 and column 4, lines 35-40).

Regarding claim 7, the reservoir and lid can be considered substantially one piece (consider bottom part 2 as the reservoir and middle and top parts 3 and 4 as the lid) thereby top

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piece 4 forming a closable opening whereby the effervescent composition and water can be added to the reservoir.

Regarding claim 8, Hill discloses that the effervescent composition can include sodium bicarbonate (column 6, line 39).

Regarding claim 10, Hill discloses that the effervescent composition can include dyes (column 7, line 11).

Claims 1, 2, 11, 12, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Shayan (US 6,772,756).

Regarding claims 1, 11, 12, and 13, Shayan discloses a vaporizing device with a reservoir (22) and a removable vapor-concentrating lid (12) for the inhalation of a volatile substance (column 2, lines 50-55). Examiner contends that volatile is synonymous with effervescent.

Regarding claim 2, the reservoir disclosed by Shayan can be considered a cup as seen in Figure 3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 14, 15, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill.

Regarding claim 9, Hill does not disclose the effervescent composition including one or more of menthol, eucalyptus oil, camphor, a flavor additive, and an excipient. However, Hill does disclose effervescent compositions useful for the treatment of skin conditions (column 7, lines 5-10), and it is well known in the art that eucalyptus oil is useful for the treatment of certain skin conditions (i.e., wounds, burns, stings). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have added eucalyptus oil to the effervescent composition taught by Hill for therapeutic reasons in order to achieve the desired therapeutic effect for the given user.

Regarding claims 14-17, the device disclosed by Hill has all of the structural limitations and is fully capable of performing the recited method steps (i.e., hot water can enter the reservoir through slot 10 or through the lid). It would have been obvious to one of ordinary skill in the art at the time the invention was made, upon seeing the device disclosed by Hill, to perform the claimed method steps. Furthermore, depending on the composition added to the reservoir, the device could be used for any of inhalation of humidified air, treating cold symptoms, treating allergy symptoms, or decongesting nasal passages.

Claims 6, 14, 15, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shayan as applied to claim 1 above and further in view of Frank (US 4,903,850).

Regarding claim 6, Shayan does not disclose a central depressed area to loosely engage a user's nasal area, although Shayan does disclose that the user can inhale the substance directly from the opening 11 (column 6, lines 55-60). Frank discloses a vaporizing device for inhalation of vapors by a user with a hooded area (14) having a recessed area for supporting portions of the

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user's face to direct the vapor into the nose and mouth without irritating his or her eyes (column 7, lines 50-62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Shayan's device with a removable hood as taught by Frank for allowing the user to directly inhale the vapors while directing the vapor to the user's nose and mouth in order to protect the eyes.

Regarding claims 14-17, the modified device of Shayan has all of the structural limitations and is fully capable of performing the recited method steps. It would have been obvious to one of ordinary skill in the art at the time the invention was made, upon seeing the modified Shayan device, to perform the claimed method steps.

Claims 1, 4, 11, 12, 13, 14, 15, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swank (US 4,399,080) in view of Shayan.

Regarding claims, 1, 4, 11, 12, and 13, Swank discloses a humidifier apparatus with a reservoir (18) comprising a collapsible membrane lining, a removable vapor-concentrating lid (14), and a composition comprising a medicament (column 3, lines 15-25). Shayan is silent as to an effervescent composition. Shayan discloses volatile medicaments for inhalation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Swank's device with an effervescent composition as taught by Shayan for providing a desired therapeutic effect for a user given his or her condition.

Regarding claims 14-17, the modified device of Swank has all of the structural limitations and is fully capable of performing the recited method steps. It would have been

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obvious to one of ordinary skill in the art at the time the invention was made, upon seeing the modified Swank device, to perform the claimed method steps.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kristen C. Matter
Examiner
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JUSTINE R. YU
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2/5/07